



## ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION  
UNITED STATES ARMY SUPPORT ACTIVITY DIX  
*KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS*

# PROBATE

**Q. WHAT IS PROBATE?** Probate is the procedure of settling the estate of a deceased person (hereafter "decedent"). The estate of one who has died consists of the property that person owned upon death. Probate retitles a decedent's property and puts it into the designated beneficiary's name. A person's estate is probated in the "domicile" (or legal residence) of that decedent. The legal residence means the place where one is entitled to vote, is required to pay state income taxes, and considers (through words and actions) to be his or her home. When the courts try to determine this, they often look at where a person owns a home, where the person's car is titled and registered, where one's driver's license is issued, and where a person has bank accounts.

**Q. WHO IS RESPONSIBLE FOR PROBATING MY ESTATE?** If you have made a will, you have probably named such a person, called an Executor, Administrator or Personal Representative (hereafter "Executor"), in that document. If you have no will, the court will appoint someone, usually a family member, to be the Administrator of your estate for this purpose.

**Q. WHAT ARE THE DUTIES OF MY EXECUTOR?** The executor's duties are the same as those of the administrator. They include the obligations to:

- a. Safeguard the property and assets of the estate;
- b. Inventory (or make a list of) the property;
- c. Submit accounts or inventories to the court as required;
- d. Pay the debts and expenses of the decedent (such as funeral and burial expenses, medical expenses, and credit card bills;
- e. Pay any federal or state death taxes; and
- f. Distribute the estate to those named in the will or, if no will exists, to your heirs as designated by statute.

**Q. WHO PAYS FOR ALL THIS?** Your estate does. In general, your estate is responsible for all your debts, bills and expenses. These must be paid before any remaining assets can be given to your heirs or your beneficiaries under the will. Your executor has no duty to pay these costs out of his or her own pocket. Your executor must release enough of your assets to allow the payment of these expenses.

**Q. IF I AM APPOINTED AS SOMEONE'S EXECUTOR, DO I GET PAID?** An Executor -- can request the court to allow payment:

- a. For out-of-pocket expenses, such as postage stamps, bank charges and mileage; and
- b. For services rendered as an Executor unless the will directs otherwise.

The amount of this latter payment will vary, of course, depending on the amount of work done, the time spent working on the estate, the complexity of the work and the size of the estate and state law.

**Q. DOES MY EXECUTOR HAVE TO PAY A FEE OR POST A BOND TO SETTLE MY ESTATE?**

Ordinarily an Executor will have to post a bond if he or she is from outside the state where the probate takes place or if he or she is administering assets for minor children. A will can waive the posting of a bond. The cost of the bond is paid by the estate.

**Q. HOW DOES MY EXECUTOR NOTIFY MY CREDITORS?** It is the duty of the Executor to notify directly, by mail, any creditors who are known at the time of your death. Your Executor must also place a legal notice in the local newspaper informing creditors of your death and a general invitation to creditors to submit their claims. This is done shortly after your Executor has been appointed by the court to handle your estate. The newspaper notice must:

- a. Give the name of the decedent and the name and address of the Executor;
- b. Be published according to state regulations in the locality where the decedent had his or her home; and
- c. State that all claims of creditors must be made within the state-specified claims period.

Once this is done, the publisher prepares an Affidavit of Publication and this is put in the court file. The Executor pays for this notice with the funds of the estate.

Any claims not presented to the Executor within this period need not be paid under most state laws. Those claims which are held valid and which are presented within this period, including any other debts and expenses known to the Executor, must be paid out of the available funds of the estate.

**Q. WHAT ARE THE INVENTORIES AND ACCOUNTS I MUST FILE AS AN EXECUTOR?** Using New Jersey as an example:

When you initially apply to the local probate court clerk's office for appointment, you will need to fill out a preliminary inventory. This is so you can give a preliminary account or a rough estimate of the assets in the estate. Within the first three months after you are appointed, you must file a 90-Day Inventory, which is the first formal accounting of the assets in the estate of the decedent -- real estate, cars and trucks, furniture, bank accounts, jewelry and so on. When you have completely settled the estate, you will then file a final inventory, listing the following:

- a. Amount of total assets as shown on the 90-Day Inventory you have already filed;
- b. Additional assets received by the estate since the filing of the Inventory (with description and fair market value);
- c. Expenses, debts, taxes and bills paid by the estate; and
- d. Distribution of the estate to the heirs (how and to whom).

If you haven't completed settlement of the estate within 12 months of qualifying as administrator or executor, you must file an annual inventory showing items a, b, and c, above. A simple estate can usually be closed in a year.

**Q. CAN I GET INTO THE SAFE DEPOSIT BOX OF THE DECEDENT?** Yes - the law provides that you can have access to the safe deposit box of the decedent, so long as you are accompanied by an official from the bank involved. At that time, the bank official will supervise the opening of the box, inventory the contents and turn the contents which belong to the estate over to you for safekeeping. The inventory is returned to the local probate court clerk's office for filing.

**Q. HOW DO I HANDLE THE MONEY OF THE DECEDENT?** First set up an estate account at a bank as soon as you have been appointed executor. You can arrange this at any local bank. There is a small charge for printing the checks showing your name and address, Executor, and the name of the

decedent. Having a separate account prevents the mixing or "commingling" of your own personal funds and those of the estate. With this done set up, you can deposit or transfer the funds of the decedent into this separate account. Some items, such as paychecks, insurance premium refunds or employee death benefits, may be deposited directly into the estate account.

**Q. ARE LIFE INSURANCE PROCEEDS PART OF THE ESTATE?** For tax purposes, life insurance proceeds are counted as part of the taxable estate if the policy was owned by the decedent. You must account for the proceeds of such a policy on the tax return (state and, if necessary, federal) of the estate. On the other hand, only life insurance proceeds payable to the estate are listed on the formal inventories filed with the local probate court clerk's office. Those policies and proceeds made payable to individual beneficiaries pass by contract, outside of the estate, directly to the named beneficiary.

**Q. ONCE I HAVE PAID ALL THE FEES AND EXPENSES AND ACCOUNTED FOR ALL THE PROPERTY, HOW DO I CLOSE THE ESTATE?** The steps are as follows:

A federal tax return is only required where a decedent's gross estate exceeds \$ \$3,500,000 in 2009. Some states impose an inheritance or estate tax in addition to the federal estate tax and tax returns will be required if the decedent lived in, or owned any property in, any of those states; the Executor must follow the state guidelines for the individual state.

The next step is to distribute the estate among the heirs-at-law (if there is no will) or the designated beneficiaries (if a will has been admitted to probate). You should obtain a receipt from all heirs or beneficiaries stating that they have received their entire share of the estate of the decedent (signed, dated and witnessed).

After you have distributed or divided the property, submit those receipts along with the final inventory to the local probate court clerk's office. You will also need cancelled checks or "paid receipts" for all expenses, fees and bills that have been paid. Once the probate clerk is satisfied that you have accounted for all assets and expenses and you have properly distributed the assets and property, the estate will be closed.

**Q. WHAT IF I HAVE OTHER QUESTIONS?** See a legal assistance attorney or private attorney. Visiting a lawyer early may not only solve a problem you have, but it may also resolve or avoid a problem in the future, on this or other unrelated subjects.